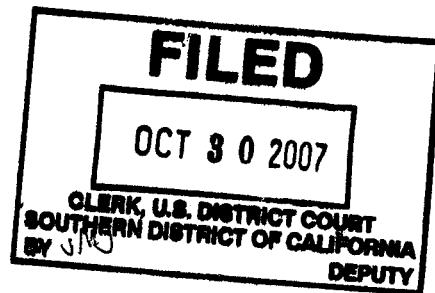


1 KAREN P. HEWITT
2 United States Attorney
3 JOSEPH J.M. ORABONA
4 Assistant United States Attorney
5 California State Bar No. 223317
United States Attorney's Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101
Telephone: (619) 557-7736



6 Attorneys for Plaintiff
7 UNITED STATES OF AMERICA

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
19 Joseph J. M. Orabona, Assistant United States Attorney, and defendant ROCCO PALOMBA, by and
20 through and with the advice and consent of defense counsel, Gregory T. Murphy, Federal Defenders
21 of San Diego, Inc., that:

28 //

JJO:psd:10/11/07

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **November 8, 2007**.

6 4. The material witness, Lorena Rivera-Jaime, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;
8 b. Entered or attempted to enter the United States illegally on or about
9 October 8, 2007;

10 c. Was found in a vehicle driven by defendant at the San Ysidro, California Port
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an
12 alien with no lawful right to enter or remain in the United States;

13 d. Was paying \$3,000 to others to be brought into the United States illegally
14 and/or transported illegally to her destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to her country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
26 of (an) unavailable witness(es); and,

27 //

28 Stipulation of Fact and Joint Motion for Release of
 Material Witness(es) And Order Thereon in
 United States v. Rocco Palomba

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to her country of origin.

12 || It is STIPULATED AND AGREED this date.

Respectfully submitted,

~~KAREN P. HEWITT
United States Attorney~~

16 Dated: 10/30/07

JOSEPH J.M. ORABONA
Assistant United States Attorney

18 Dated: 10/22/07

GREGORY T. MURPHY
Defense Counsel for ROCCO PALOMBA

21 Dated: 10/22/07

~~ROCCO PALOMBA
Defendant~~

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Rocco Palomba

ORDER

2 Upon joint application and motion of the parties, and for good cause shown,
3 **THE STIPULATION** is admitted into evidence, and,
4 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
5 forthwith to the Department of Homeland Security for return to her country of origin.

SO ORDERED.

Dated: 10/30/07.

~~United States Magistrate Judge~~